IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6814 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KRISHNA TRADING COMAPNAY

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 6814 of 2003
MR AMAR P DAVE for Petitioner No. 1-2
MR DN PATEL for Respondent No. 1-3 & 5
MR MK VAKHARIA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 16/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

Leave to amend.

Leave to add the Commissioner of Customs, Nhava Sheva, Mumbai, as respondent No. 5.

1. Rule. Service of rule is waived by Sr. Central Government Standing Counsel Shri D.N. Patel for respondents Nos. 1, 2, 3 and 5 and by learned advocate Shri Mehul Vakharia for respondent No. 4. At the request of the learned advocates, the petition is finally heard today.

2. We have heard the learned advocates and have also gone through the pleadings. Looking to the course, which we are adopting for disposal of this petition, we feel that it is not necessary to set out the facts giving rise to the petition in detail.

3. The grievance of the petitioner in the petition is with regard to disposal of 1352 cartons of polyester yarn weighing 38,498 Kgs. valuing approximately Rs. 54 lakhs by respondent No. 3. The case of the petitioner is that its abovestated goods have been disposed of by respondent by 3 for Rs. 32 lakhs by holding an auction. It has been prayed in the petition that the sale proceeds received by respondent No. 3 be directed to be given to the petitioner. It has been also submitted that disposal of the said goods by respondent No. 3 was improper as some proceedings in relation to the said goods were pending and the goods had been disposed of at a very low price.

4. Looking to the peculiar facts of the case, and more particularly when a show-cause notice dated 11.6.2003 has already been issued to the petitioner by respondent No. 3 in relation to the goods, which are subject-matter of this petition, in our opinion, we need not go into the merits of the matter especially when respondent No. 5 has already considered the reply given by the petitioner to the show-cause notice dated 11.6.2003 and respondent No. 5 has also heard the arguments advanced by the petitioner.

5. In our opinion, justice would be done to the petitioner if respondent No. 5 is directed to pronounce his final order as soon as possible and not later than six weeks from the date of receipt of a certified copy of

this judgment by him.

6. If respondent No. 5 decides the matter in favour of the petitioner, a sum of Rs. 32 lakhs, realized by respondent No. 3 upon disposal of the goods in question, shall be paid to the petitioner within a period of four weeks from the date of pronouncement of the final order by respondent No. 5. If respondent No. 5 decides against the petitioner and if the petitioner is constrained to challenge the validity of the order of respondent No. 5 before CESTAT, the CESTAT shall not constrain the petitioner to pay any amount by way of pre-deposit, as respondent No. 3 is already having a sum of Rs. 32 lakhs being sale proceeds of the goods in question.

In view of the above order, the petition is disposed of as allowed. Rule is made absolute to the above extent with no order as to costs. D.S. permitted.

(A.R. Dave, J.)

(K.A. Puj, J.)

(hn)